



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE DELIO MUÑOZ,

Plaintiff,

v.

11 Civ. 3023 (DAB)
ADOPTION OF REPORT
AND RECOMMENDATION

TIANO'S CONSTRUCTION CORP., et al.,

Defendants.
-----X

DEBORAH A. BATTS, United States District Judge.

On July 6, 2012, United States Magistrate Judge Henry Pitman issued a Report and Recommendation ("Report") recommending that the Motion for Summary Judgment of Defendants Pythagoras General Contracting Corp. ("Pythagoras") and Safeco Insurance Company of North America ("Safeco") be GRANTED. (Report at 10-11.) For the reasons set forth below, the Court having conducted the appropriate levels of review following Plaintiff's Objections, the Report and Recommendation of Magistrate Judge Pitman dated July 6, 2012 shall be adopted in its entirety. Accordingly, the Court GRANTS Defendants Pythagoras and Safeco's Motion for Summary Judgment.

A judge may designate a magistrate judge to submit proposed findings of fact and recommendations for the disposition of a motion for summary judgment. 28 U.S.C. § 636(b)(1)(B); accord Fed. R. Civ. P. 72(b)(1). "Within fourteen days after being served with a copy [of a magistrate judge's Report and

Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The Court may adopt those portions of the Report to which no timely objection has been made, as long as there is no clear error on the face of the record. DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009). A district court must review de novo "those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). However, "to the extent that the party makes only conclusory or general arguments, or simply reiterates the original arguments, the Court will review the Report strictly for clear error." DiPilato, 662 F. Supp. 2d at 339 (internal quotation marks omitted); see also Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) ("Reviewing courts should review a report and recommendation for clear error where objections are merely perfunctory responses, argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition.") (internal quotation marks omitted). After conducting the appropriate levels of review, the Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate. 28 U.S.C. § 636(b)(1)(C).

The objections of pro se parties are "generally accorded leniency and should be construed to raise the strongest arguments that they suggest." Howell v. Port Chester Police Station, 2010 WL 930981, at *1 (S.D.N.Y. Mar. 15, 2010) (citation omitted). "Nonetheless, even a pro se party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument." Id. (quoting Pinkney v. Progressive Home Health Servs., No. 06-CV-5023, 2008 U.S. Dist. LEXIS 55034, at *2-3 (S.D.N.Y. July 21, 2008) (internal quotation marks omitted)).

Plaintiff filed timely Objections to the Report. Plaintiff's Objections express his wholehearted disagreement with the Report, but do not specifically address or rebut the Report's findings that Plaintiff's claims are barred by the doctrine of res judicata and, in the alternative, that any Fair Labor Standards Act claims that Plaintiff may have are now time barred. (Report at 6-10.) Instead, Plaintiff reiterates his previous argument that he was underpaid and makes the general argument that the prior state court decision was unjust and unfair.

Plaintiff's Objections are insufficient to trigger de novo review of the Report. The Court therefore reviews the Report for

clear error. The Court having found none, it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Henry Pitman, dated July 6, 2012, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. This action is hereby DISMISSED as to Defendants Pythagoras and Safeco.

This Order resolves the Motion at Docket Number 14. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York

September 28, 2012

Deborah A. Batts

Deborah A. Batts
United States District Judge